Filed 12/8/09 In re J.P. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re J.P., a Person Coming Under the Juvenile Court Law.	B213805
THE PEOPLE, Plaintiff and Respondent, v. J.P., Defendant and Appellant.	(Los Angeles County Super. Ct. No. NJ23603)

APPEAL from a judgment of the Superior Court of Los Angeles County, John C. Lawson II, Temporary Judge. (Pursuant to Cal. Const., art VI, § 21.) Affirmed.

Marta I. Stanton, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Lawrence M. Daniels and Chung L. Mar, Deputy Attorneys General, for Plaintiff and Respondent.

J.P. appeals from an order of wardship (Welf & Inst. Code, § 602) following a finding that he committed a sexual battery, a misdemeanor (Pen. Code, § 243.4, subd. (e)(1)), first degree burglary (Pen. Code, § 459), and a lewd act upon a child, (Pen. Code, § 288, subd. (a)).[1] He was placed home on probation in the home of his mother and contends the record does not support the juvenile court's finding that he committed the three offenses. For reasons stated in the opinion, we affirm the order of wardship.

FACTUAL AND PROCEDURAL HISTORY

On April 17, 2008, at approximately 5:30 p.m., 14-year-old L.T. was pushing her sister in a stroller near 53rd Street and Mountainview in Long Beach near the Carmelitos apartment complex when she saw appellant riding his bike toward her. Appellant rode around her and then started following her. L.T. was nervous and sped up a little to get away from appellant. She crossed the street and appellant followed her. Appellant rode his bike in front of her and then stopped. He then leaned off his bike and grabbed her left breast, squeezed it for a couple of seconds, and then let go. Appellant was laughing as he rode off on his bike. Two older boys he had been with were also laughing. L.T. picked up her little sister, grabbed the stroller, and ran home crying. Appellant had followed her for approximately 15 minutes.

Long Beach Police Officer David Demasi assisted in the apprehension of appellant who was riding his bike. When the officer told appellant the officer needed to speak to him, appellant replied he had to go and that he would be right back. Appellant quickly rode away on his bike. When Officer Demasi caught up to appellant and detained him, appellant stated, "I didn't do anything."

Following waiver of *Miranda*[2] rights, Long Beach Police Officer John Ward

---

[1] J.P. was 10 years old at the time he committed the sexual battery and 11 years old when he committed the burglary and lewd act on a child.

[2] *Miranda v. Arizona* (1966) 384 U.S. 436.

questioned appellant pursuant to *Gladys R.*[3] Appellant stated he knew it was "wrong to touch a girl without permission" and that his mother had taught him that. He also stated "if someone did this to [him, it would] be wrong" and that was why he "said sorry." Appellant additionally stated his mother had taught him it was wrong to touch other people. Based on appellant's answers, Officer Ward formed the opinion that appellant knew the difference between right and wrong.

On June 24, 2008, 10-year-old T.S. spent the night at her friend I.'s apartment in the Carmelitos apartment complex in Long Beach. The next morning she was awakened when she felt "something wet on [her] lip." When she opened her eyes, she saw appellant standing on the side of the bed, "kind of . . . kneeling on [her]. Appellant was bent over her, approximately four inches from her face. It felt like she had been kissed or licked. She felt wetness on her lips and soft skin against her face. Appellant then grabbed her leg and tickled her thigh for approximately two seconds. T.S. kicked appellant and told him to get out. After approximately two minutes, I.'s dog came and barked at appellant and appellant fled through a window. T.S. saw that appellant climbed out through a three-foot tear in the window screen. The screen had not been torn the night before. T.S. was very frightened by the incident. Approximately one month before, T.S. had played with appellant for approximately 30 minutes in the park.

I. testified that appellant said, "Wrong room" to T.S. and I. before he left.

Following appellant's arrest and in response to questioning by Long Beach Police Officer Francisco Pena pursuant to *Gladys R.*, appellant stated he knew it was wrong to touch others without permission and that his mother had taught him this. He also said he knew it was wrong to enter someone's home without permission. He said he was taught that "people might think [he] stole something."

In defense, Dr. Ronald R. Fairbanks, a forensic psychologist, testified that on November 10, 2008, he interviewed appellant and appellant's mother and prepared a report. Dr. Fairbanks assessed appellant's level of development with respect to sexuality

---

3 *In re Gladys R.* (1970) 1 Cal.3d 855.

as consistent with an 11-year-old boy, almost nonsexual or "presexual." He described appellant as very naïve and coming from an overprotective family. Dr. Fairbanks testified that appellant had stated he did not have a girlfriend and "wasn't into girls" and seemed to have no idea what masturbation or sexual intercourse was about. Appellant did have an idea about "good and bad touching" and denied exposure to videos of a sexual nature. Dr. Fairbanks opined that "breaking in and licking someone on the mouth smack[ed] of kind of a sexual advance" but that the incident was not consistent with his assessment of appellant. Appellant did not seem aggressive and seemed uncomfortable discussing sexual issues. Dr. Fairbanks opined that "possibly falling off a bike, could have [been] an accidental touching."

In response to a hypothetical question, Dr. Fairbanks opined that a 10-year-old minor who engaged in conduct consistent with the evidence relating to the incident involving L.T., could have been motivated by intellectual or sexual curiosity or a combination of things.

DISCUSSION

"'The standard of proof in juvenile proceedings involving criminal acts is the same as the standard in adult criminal trials. [Citation.]' [Citation.] In considering the sufficiency of the evidence in a juvenile proceeding, the appellate court 'must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence–such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. We must presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence [citation] and we must make all reasonable inferences that support the finding of the juvenile court. [Citation.]' [Citations.]" (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1088-1089.) "This standard applies to cases based on circumstantial evidence. [Citation.]" (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 830.)

"'Although it is the duty of the [trier of fact] to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the [trier of fact], not the appellate court[,] which

must be convinced of the defendant's guilt beyond a reasonable doubt. "'If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment.'" [Citations.] "Circumstantial evidence may be sufficient to connect a defendant with the crime and to prove his guilt beyond a reasonable doubt." [Citation.]' [Citations.]" (*People v. Figueroa* (1992) 2 Cal.App.4th 1584, 1587.)

I

Appellant contends the evidence is insufficient to support the finding he violated Penal Code section 288, subdivision (a) because he did not have the specific intent to arouse sexual desires and because he did not commit a lewd act. We disagree.

Penal Code section 288, subdivision (a) provides in pertinent part that any person "who willfully and lewdly commits any lewd or lascivious act . . . upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions or sexual desires of that person or the child, is guilty of a felony. . . ." "*Any* touching of a child under the age of 14 violates this section, even if the touching is outwardly innocuous and inoffensive, if it is accompanied by the *intent* to arouse or gratify the sexual desires of either the perpetrator or the victim. [Citation.]" (*People v. Lopez* (1998) 19 Cal.4th 282, 289.)

"Circumstances relevant to determining whether the touching was sexually motivated include the nature of the charged act, physical evidence of sexual arousal, clandestine meetings, 'the defendant's extrajudicial statements [citation], other acts of lewd conduct admitted or charged in the case [citations], the relationship of the parties [citation], and any coercion, bribery, or deceit used to obtain the victim's cooperation or to avoid detection [citation].' [Citation.]" (*In re Randy S.* (1999) 76 Cal.App.4th 400, 405-406., italics omitted.) "The trier of fact must find a union of act and sexual intent . . . and such intent must be inferred from all the circumstances beyond a reasonable doubt. A touching which might appear sexual in context because of the identity of the perpetrator, the nature of the touching, or the absence of an innocent explanation, is more

likely to produce a finding that the act was indeed committed for a sexual purpose and constituted a violation of the statute. On the other hand, if the trier of fact *is* persuaded beyond a reasonable doubt, from all the circumstances, that the touching of a child *was* sexually motivated, nothing in the language, history, or purpose of section 288 indicates that the touching should escape punishment simply because it might not be considered a means of sexual gratification by members of the mainstream population." (*People v. Martinez* (1995) 11 Cal.4th 434, 452.)

Here, a reasonable trier of fact could conclude appellant touched T.S. for a sexual purpose. The nature of the touching, kissing or licking her lips, grabbing her leg and tickling her thigh, supports the conclusion appellant was motivated by sexual purposes. Even the defense expert opined, "breaking in and licking someone on the mouth smacks of kind of a sexual advance." Additionally, the touching was accomplished in a clandestine manner. During the early morning hours, appellant cut a hole in a window screen and entered a second-floor bedroom and touched T.S. while she slept. He then escaped through the bedroom window to avoid detection. Further relevant to appellant's intent was the fact that approximately two months earlier appellant had committed a sexual battery on another young girl.

Appellant claims he was an immature, pre-sexual 11-year-old incapable of forming the intent to arouse sexual desires. "While it is reasonable to assume that if a young child is incapable of experiencing sexual arousal, the child would not intend to arouse his own sexual desires, it is likewise reasonable to assume that when a young child begins to experiment in sexual arousal, the child *can* harbor an intent to arouse his own sexual desires." (*In re Randy S.*, *supra*, 76 Cal.App.4th 400, 406.)

In re Jerry M. (1997) 59 Cal.App.4th 289, 300 cited by appellant is distinguishable. While the minor in *Jerry M.* was also just 11 years old, the victims knew the minor, and the conduct occurred in public, during the daytime, in the presence of others. There was no attempt to avoid detection, no clandestine activity before the touching, and no attempt to prolong the touching beyond the initial momentary contact.

To the extent appellant is claiming his conduct was not a lewd act, any touching of a child under the age of 14 is a violation of Penal Code section 288, subdivision (a), even if it appears to be innocuous and inoffensive, if it is accomplished with the intent of arousing the sexual desires of the perpetrator or the child. (See *People v. Martinez*, *supra*, 11 Cal.4th at p. 452.)

II

Appellant's related contention that there was insufficient evidence to support the burglary finding because no evidence was introduced that he entered the home with a felonious intent is without merit. "The crime of burglary consists of an act—unlawful entry—accompanied by the 'intent to commit grand or petit larceny or any felony.' [Citation.] One may be liable for burglary upon entry with the requisite intent to commit a felony or a theft (whether felony or misdemeanor), regardless of whether the felony or theft committed is different from that contemplated at the time of entry, or whether any felony or theft actually is committed." (*People v. Montoya* (1994) 7 Cal.4th 1027, 1041-1042, fn. omitted.) Whether appellant entered the residence with the required intent presents a factual question and if "'the circumstances of a particular case and the conduct of the accused reasonably indicate his purpose in doing so is to commit a larceny or any felony[,] a verdict of guilty of the crime of burglary will not be disturbed on appeal.'" (*People v. Bard* (1968) 70 Cal.2d 3, 5.)

Appellant premises his argument on the same claim as above, namely, that his conduct upon entering the bedroom amounted to no more than playing a prank on his peers. As we explained, sufficient evidence supported the finding that appellant committed a lewd act upon a child. A reasonable trier of fact could similarly conclude that when appellant entered the victim's apartment during the early morning hours, after cutting a hole in the window screen to gain entry into the bedroom where young girls were sleeping, he did so with the intent of committing that felony.

III

Appellant additionally claims there was insufficient evidence to support the juvenile court's finding he committed a sexual battery in that the evidence was

insufficient to show he had the specific intent to arouse sexual desires. Penal Code section 243.4, subdivision (e)(1) provides in pertinent part, "Any person who touches an intimate part of another person, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of misdemeanor sexual battery . . . ."

"'[S]exual abuse' includes the touching of a woman's breast, without consent, for the purpose of insulting, humiliating, or intimidating the woman, even if the touching does not result in actual physical injury." (*In re Shannon T.* (2006) 144 Cal.App.4th 618, 622.)

Here, the record indicates appellant rode around and followed L.T. for approximately 15 minutes. He made her nervous and followed her as she crossed the street in an attempt to avoid him. In the presence of two older boys who were laughing, appellant grabbed L.T.'s breast, squeezed it for a couple of seconds and then let go. While laughing, appellant fled on his bike and tried to evade the police when an officer attempted to talk to him. A reasonable trier of fact could conclude appellant grabbed L.T.'s breast for the purpose of insulting, humiliating, or intimidating her in the presence of the older boys and the finding of sexual battery is supported by substantial evidence.

DISPOSITION

The order of wardship is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

EPSTEIN, P.J. SUZUKAWA, J.